

UNITED STATES OF AMERICA
DEPARTMENT OF ENERGY
OFFICE OF FOSSIL ENERGY

FREEPORT LNG DEVELOPMENT, L.P.

)
)
) FE DOCKET NO. 11-51-LNG

ORDER GRANTING BLANKET AUTHORIZATION
TO EXPORT PREVIOUSLY IMPORTED
LIQUEFIED NATURAL GAS BY VESSEL

DOE/FE ORDER NO. 2986

JULY 19, 2011

I. SUMMARY

Following an examination of all record evidence in this proceeding in conformity with the requirements of section 3 of the Natural Gas Act, 15 USC 717b, as amended by section 201 of the Energy Policy Act of 1992 (Pub. L. 102-486) (NGA); part 590 of DOE's regulations, 10 CFR part 590 (2008); and applicable delegations and redelegations of authority,¹ the Office of Fossil Energy (FE) of the Department of Energy (DOE) is herein granting the April 21, 2011, application of Freeport LNG Development, L.P. (Freeport LNG).

The authorization permits Freeport LNG to export liquefied natural gas (LNG) that previously had been imported from foreign sources, in an amount up to the equivalent of 24 billion cubic feet (Bcf) of natural gas on a cumulative basis, over a two-year period commencing on the date of this Order. Freeport LNG is authorized to export this LNG to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy. Freeport LNG is authorized to export this LNG to which it holds title on its own behalf and as agent for others who hold title, after registering the other entity with DOE/FE. This authorization permits such exports on a short-term or spot market basis from the existing Freeport LNG terminal facilities on Quintana Island near Freeport, Texas. The authorization provided by this Order will not permit the export of domestically produced LNG.

¹ The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. §717b) has been delegated to the Assistant Secretary for FE in Redelegation Order No. 00-002.04E issued on April 29, 2011.

II. PROCEDURAL HISTORY

Freeport LNG filed the “Application for Blanket Authorization to Export Liquefied Natural Gas on a Short-Term Basis” (Application) with FE on April 21, 2011. The Application was submitted pursuant to section 3 of the NGA² and part 590 of DOE’s regulations.

On June 9, 2011, DOE/FE published a Notice of Application (Notice) in the Federal Register. 76 FR 33746. The Notice stated that comments, protests, motions and notices to intervene, and requests for additional procedures would be due no later than July 11, 2011.

FE received no filings in response to this Notice.

III. BACKGROUND

Freeport LNG is a Delaware limited partnership with one general partner, Freeport LNG-GP, Inc., a Delaware corporation, which is owned 50% by an individual, Michael S. Smith, and 50% by ConocoPhillips Company. Freeport LNG’s limited partners are: (1) Freeport LNG Investments, LLLP, a Delaware limited liability limited partnership which owns a 20% limited partnership interest in Freeport LNG; (2) ZHA FLNG Purchaser LLC, a Delaware limited liability company and wholly-owned subsidiary of Zachary American Infrastructure, LLC, which owns a 55% limited partnership interest in Freeport LNG; (3) Texas LNG Holdings, LLC, a Delaware limited liability company and wholly-owned subsidiary of The Dow Chemical Company, which owns a 15% limited partnership interest in Freeport LNG; and (4) Turbo LNG, LLC, a Delaware limited liability company and wholly-owned subsidiary of Osaka Gas Co., Ltd., which owns a 10% limited partnership interest in Freeport LNG. Freeport LNG has its principal place of business in Houston, Texas.

² The authority to regulate the imports and exports of natural gas, including liquefied natural gas, under section 3 of the NGA (15 U.S.C. §717b) has been delegated to the Assistant Secretary for FE in Redelelegation Order No. 00-002.04E issued on April 29, 2011.

On June 18, 2004, the Federal Energy Regulatory Commission (FERC) authorized Freeport LNG to site, construct and operate the Freeport LNG terminal on Quintana Island, southeast of the City of Freeport in Brazoria County, Texas. The facilities, completed in June 2008, include an LNG ship marine terminal and unloading dock, LNG transfer lines and storage tanks, high-pressure vaporizers, and a 9.6-mile long send-out pipeline extending to the Stratton Ridge meter station.³ On July 1, 2008, FERC issued a letter Order granting Freeport LNG's request to commence service at its Quintana Island import terminal.

On January 15, 2008, DOE/FE granted Freeport LNG blanket authorization to import up to 30 Bcf of LNG from various international sources for a two-year term beginning March 1, 2008.⁴ On December 15, 2009, DOE/FE granted Freeport LNG blanket authorization to import LNG for a second two-year term beginning March 1, 2010.⁵

On May 6, 2009, FERC authorized certain equipment modifications at the Freeport LNG terminal as required to enable the loading and export of foreign-source LNG.⁶

On May 28, 2009, in DOE/FE Order No. 2644 (Order 2644), DOE/FE granted Freeport LNG blanket authorization to export, on its own behalf or as agent for others, up to a total of the equivalent of 24 Bcf of foreign-source LNG from the Freeport LNG terminal over a two-year period to customers in the United Kingdom, Belgium, Spain, France, Italy, Japan, South Korea, India, China and/or Taiwan.⁷ This blanket authorization was later amended to permit exports to

³ See *Freeport LNG Development, L.P.*, 107 FERC ¶ 61,278, (2004), *order granting rehearing and clarification*, 108 FERC ¶ 61,253 (2004), *order amending Section 3 authorization*, 112 FERC ¶ 61,194 (2005), *order issuing authorization*, 116 FERC ¶ 61,290 (2006).

⁴ *Freeport LNG Development, L.P.*, DOE/FE Order No. 2457, issued January 15, 2008.

⁵ *Freeport LNG Development, L.P.*, DOE/FE Order No. 2737, issued December 15, 2009.

⁶ *Freeport LNG Development, L.P.*, 127 FERC ¶ 61,105 (2009).

⁷ *Freeport LNG Development, L.P.*, DOE/FE Order No. 2644, issued May 28, 2009.

Canada, Mexico and any other country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy.⁸

Current Application

In the instant application, Freeport LNG is seeking blanket authorization commencing on the date of this Order, to export LNG from Freeport LNG's terminal facilities on Quintana Island near Freeport, Texas, that has been previously imported from foreign sources, to any country with the capacity to import LNG via ocean-going carrier and with which trade is not prohibited by U.S. law or policy, over a two-year period, in an amount up to the equivalent of 24 Bcf of natural gas. Freeport LNG requests that the authorization include imported LNG supplies to which Freeport LNG holds title, as well as LNG supplies imported from foreign sources that Freeport LNG may export as agent on behalf of other entities who themselves hold title. Freeport LNG is not requesting authority to export domestically produced natural gas or LNG.

IV. DECISION

A. Standard of Review

Pursuant to the transfer of authorities under sections 301(b) and 402 of the DOE Organization Act, 42 USC 7151(b) and 42 USC 7172, DOE/FE is responsible for evaluating the instant application under section 3 of the NGA. Section 3(a) provides:

[N]o person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order of the [Secretary of Energy] authorizing it to do so. The [Secretary] shall issue such order upon application, unless after opportunity for hearing, [he] finds that the proposed exportation or importation will not be consistent with the public interest. The [Secretary] may by [the Secretary's] order grant such application, in whole or part, with such modification and upon such terms and conditions as the [Secretary] may find necessary or appropriate.
15 USC 717b(a).

⁸ *Freeport LNG Development, L.P.*, DOE/FE Order Nos. 2644-A and 2644-B, issued September 22, 2009 and May 11, 2010, respectively.

In evaluating an export application under section 3, DOE/FE applies the principles described in DOE Delegation Order No. 0204-111, which focuses primarily on domestic need for the gas to be exported, as described in the Secretary's natural gas policy guidelines,⁹ and any other matters determined to be appropriate to a determination of the public interest. In addition, the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, requires DOE to give appropriate consideration to the environmental effects of its proposed decisions.

B. Domestic Need

The instant application involves a request for authorization to export LNG that was not produced in the United States. Accordingly, exporting the gas necessarily could not reduce the availability of domestically produced gas. On the other hand, exporting previously imported LNG will still affect the domestic market because, for a two-year period, the exports will reduce the volume of natural gas potentially available for domestic consumption.

DOE/FE has issued recent blanket authorizations to export previously imported LNG¹⁰ and in each case cited the evidence of record which indicates that United States consumers presently have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG seeks to export. DOE takes administrative notice that a review of the most recent data and analysis prepared by the Energy Information Administration (EIA) within DOE shows an increasing volume of shale gas production compared to the data and projections referenced in *Dow Chemical Company*, DOE/FE Order No. 2859 (October 5, 2010) (*Dow Chemical*)¹¹. Specifically,

⁹ See 49 FR 6684, February 22, 1984.

¹⁰ *ENI USA Gas Marketing LLC*, DOE/FE Order No. 2923 (March 3, 2011); *Sempra LNG Marketing, LLC*, DOE/FE 2885 (December 3, 2010); *Dow Chemical Company*, DOE/FE Order No. 2859 (October 5, 2010); *Cheniere Marketing, LLC* DOE/FE Order No. 2795 (June 1, 2010); *Freeport LNG Development, L.P.* DOE/FE Order No. 2644-B (May 11, 2010); *ConocoPhillips Company*, DOE/FE Order No. 2731 (November 30, 2009).

¹¹ *Dow Chemical Company*, DOE/FE Order No. 2859 (October 5, 2010), at 4 through 6 provides a discussion of relevant records discussing domestic need for previously imported LNG that are applicable to this application.

EIA indicates that domestic shale gas production increased to 3.1 trillion cubic feet (Tcf) in 2009 compared to 2.1 Tcf and 1.3 Tcf in 2008 and 2007, respectively¹². Further, in the *Annual Energy Outlook 2011 (AEO2011)*, EIA projects that by 2015 (during the period for which Freeport LNG seeks export authorization) shale gas production is projected to increase to 7.2 Tcf compared to the 3.85 Tcf for 2015 in AEO2010 referenced in *Dow Chemical*¹³. Therefore the evidence of record indicates that United States consumers continue to have access to substantial quantities of natural gas sufficient to meet domestic demand from multiple other sources at competitive prices without drawing on the LNG which Freeport LNG seeks to export. In addition, I note that no interested person intervened in this proceeding or otherwise challenged Freeport LNG's assertions of sufficient supplies to meet domestic demand if the application is granted.

C. Agency Rights

As described above, Freeport LNG requests authorization to export LNG on its own behalf or as agent for others. DOE/FE addressed the issue of agency rights in *Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC*, Order No. 2913, issued February 10, 2011. In Order No. 2913, DOE/FE approved a proposal by Freeport LNG Expansion, L.P. and FLNG Liquefaction, LLC (collectively, FLEX) to register each LNG title holder for whom FLEX sought to export LNG as agent. FLEX also proposed that this registration include a written statement by the title holder acknowledging and agreeing to comply with all applicable requirements included in its export authorization and to include those requirements in any subsequent purchase or sale agreement entered into by that title holder. In the FLEX application (FE Docket No. 10-160-LNG), FLEX also stated that it would file under seal with DOE/FE any

¹² EIA, *Shale Gas Production* Table, Release Date: December 30, 2010
http://www.eia.gov/dnav/ng/ng_prod_shalegas_s1_a.htm

¹³ *AEO2011* at 141, Table A13 and *AEO2010* at 133, Table A13.

relevant long-term commercial agreements that it reached with the LNG title holders on whose behalf the exports were performed.

In Order No. 2913, DOE/FE found that the above proposal was an acceptable alternative to the non-binding policy adopted by DOE/FE in *Dow Chemical*, which established that the title for all LNG authorized for export must be held by the authorization holder at the point of export. DOE/FE agreed to accept the FLEX alternative because it would ensure that the title holder was aware of all DOE/FE requirements applicable to the proposed export and would provide DOE with a record of all authorized exports and direct contact information and a point of contact with the title holder. Moreover, DOE/FE found that the registration process was responsive to current LNG markets and provided an expedited process by which companies seeking to export LNG can do so. Additionally, in Order No. 2913, DOE/FE noted that those entities that hold title or expect to hold title to LNG that is stored in domestic LNG terminals can choose to submit an application to DOE for their own authorization to export LNG, and are not required to use the agency rights held by others.

The same policy considerations that supported DOE/FE's acceptance of the alternative proposal in Order No. 2913 apply here as well. In order to ensure that the public interest is served, the authorization granted herein shall be conditioned to require that where Freeport LNG proposes to export as agent for others, Freeport LNG must register the other entity with DOE/FE in accordance with the procedures and requirements described herein.

D. Other Public Interest Considerations

Domestic need is the only explicit public interest consideration identified by DOE in Delegation Order No. 0204-111. However, consistent with DOE's Guidelines and applicable precedent, *e.g.*, Order No. 1473, the Department considers the potential effects of proposed exports on other aspects of the public interest. The other considerations in this case include the environment.

The Environment

NEPA requires DOE to give appropriate consideration to the environmental effects of its proposed decisions. In the application, Freeport LNG states that no new facilities or modification to any existing facilities at the Quintana Island terminal would be required in order for Freeport LNG to export LNG from that facility. Freeport LNG asserts that exports of LNG from the Quintana Island terminal also would not increase the number of LNG carriers that the facility is designed and authorized to accommodate. As noted, no person has submitted contrary information. Under these circumstances, DOE's NEPA procedures provide for a categorical exclusion for which neither an environmental assessment (EA) nor an environmental impact statement (EIS) is required.¹⁴ Accordingly, DOE issued a Categorical Exclusion Determination, dated July 19, 2011, which found that the Freeport LNG proposed action is categorically excluded from further NEPA review.

E. Effective Date of Order

The requested authorization will be effective upon the issuance of this Order.

¹⁴ "Approval of new authorization or amendment of existing authorization to import/export natural gas under section 3 of the Natural Gas Act that does not involve new construction and only requires operational changes, such as an increase in natural gas throughput, change in transportation, or change in storage operations." 10 CFR Part 1021.410 Appendix B to Subpart D of Part 1021, Categorical Exclusions in B5.

F. Conclusion

After due consideration based on all facts and evidence of record, I find that a grant of the export application is not inconsistent with the public interest. In particular, the record shows there is sufficient supply of natural gas to satisfy domestic demand from multiple other sources at competitive prices without drawing on the previously imported LNG which Freeport LNG seeks to export through the authorization timeframe; and this application falls under DOE categorical exclusion such that no new EA or EIS will be required. Therefore, I will grant the application.

ORDER

Pursuant to section 3 of the NGA it is ordered that:

A. Freeport LNG is authorized to export LNG that previously had been imported from foreign sources in an amount up to the equivalent of 24 Bcf of natural gas pursuant to transactions that have terms of no longer than two years. This authorization shall be effective for a two-year term beginning on July 19, 2011, and extending through July 18, 2013.

B. This LNG may be exported from Freeport LNG's terminal located on Quintana Island near Freeport, Texas, to any country with the capacity to import ocean-going LNG carriers and with which trade is not prohibited by U.S. law or policy.

C. Freeport LNG is permitted to use its authorization in order to export LNG on its own behalf or on behalf of or as agent for others, after registering the other party with DOE/FE.

D. Freeport LNG, or others for whom Freeport LNG acts as agent, shall include the following provision in any contract for the sale or transfer of LNG exported pursuant to this Order:

"Customer or purchaser acknowledges and agrees that it will resell or transfer LNG purchased hereunder for delivery only to countries identified in Ordering Paragraph B of DOE/FE Order No. 2985, issued July 19, 2011 in FE Docket No. 11-51-LNG, and/or to purchasers that have agreed in writing to limit their direct or indirect resale or transfer of such LNG to such countries. Customer or purchaser further commits to cause a report to be provided to Freeport LNG Development, L.P. that identifies the country of destination, upon delivery, into which the exported LNG was actually delivered, and to include in any resale contract for such LNG the necessary conditions to insure that Freeport LNG Development, L.P. is made aware of all such actual destination countries."

E. As a condition of this authorization, Freeport LNG shall ensure that all persons required by this Order to register with DOE/FE have done so. Any failure by Freeport LNG to ensure that all such persons or entities are registered with DOE/FE shall be grounds for rescinding in whole or in part the authorization.

F. Registration materials shall include an acknowledgement and agreement by the registrant to supply Freeport LNG with all information and copies of contracts necessary in order to permit Freeport LNG to register that person or entity with DOE/FE, including: (1) the registrant's agreement to comply with this Order and all applicable requirements of DOE's regulations at 10 CFR Part 590, including but not limited to destination restrictions; (2) the exact legal name of the registrant, state/location of incorporation/registration, primary place of doing business, and the registrant's ownership structure, including the ultimate parent entity if the

registrant is a subsidiary or affiliate of another entity; (3) the name, title, mailing address, e-mail address, and telephone number of a corporate officer or employee of the registrant to whom inquiries may be directed; and (4) an acknowledgement and agreement by the registrant to include the Ordering Paragraph D provision in any contract for the sale or transfer of LNG exported pursuant to this Order.

G. Each registration submitted pursuant to this Order shall have current information on file with DOE/FE. Any changes in company name, contact information, or other relevant modifications, shall be filed with DOE/FE within 30 days of such change(s).

H. **Monthly Reports:** With respect to the export of LNG authorized by this Order, Freeport LNG shall file with the Office of Natural Gas Regulatory Activities, within 30 days following the last day of each calendar month, a report indicating whether exports of LNG have been made. Monthly reports must be filed whether or not initial deliveries have begun. If no exports have been made, a report of “no activity” for that month must be filed. If exports of LNG have occurred, the report must give the following details of each LNG cargo: (1) the name of the U.S. export terminal; (2) the name of the LNG tanker; (3) the date of departure from the U.S. export terminal; (4) the country of destination; (5) the name of the supplier/seller; (6) the volume in Mcf; (7) the delivered price per MMBtu; (8) the duration of the supply agreement (indicate spot sales); and (9) the name(s) of the purchaser(s).

(Approved by the Office of Management and Budget under OMB Control No. 1901-0294.)

I. The first monthly report required by this Order is due not later than August 30, 2011, and should cover the reporting period from July 19, 2011, through July 31, 2011.

J. All monthly report filings shall be made to U.S. Department of Energy (FE-34), Office of Fossil Energy, Office of Natural Gas Regulatory Activities, P.O. Box 44375, Washington,

D.C. 20026-4375, Attention: Ms. Yvonne Caudillo. Alternatively, reports may be e-mailed to Ms. Caudillo at Yvonne.caudillo@hq.doe.gov or ngreports@hq.doe.gov, or may be faxed to Ms. Caudillo at (202) 586-6050.

Issued in Washington, D.C., on July 19, 2011.

A handwritten signature in dark ink, appearing to read "John A. Anderson", is written over a horizontal line.

John A. Anderson
Manager, Natural Gas Regulatory Activities
Office of Oil and Gas Global Security and Supply
Office of Fossil Energy